



Plaintiffs' Response to Defendant Micron Electronic Inc.'s Motion to Strike Plaintiffs' Statement of Material Facts Filed in Opposition to Defendant Micron Electronic Inc.'s Motion for Partial Summary Judgment Re: Statute of Limitations (Docket No. 242)

Plaintiffs file this Response pursuant to the Court's order entered October 15, 2004.

In its Memorandum in Support of Motion to Strike Plaintiffs' Statement of Material Facts (Docket No. 220) Filed in Opposition to Micron Electronic Inc.'s Motion for Partial Summary Judgment Re: Statutes of Limitation ("Motion to Strike Memo"), defendant Micron Electronics Inc. ("Micron") argues first that plaintiff filed a statement of facts in excess of the length permitted by D. Idaho L. Civ. R. 7.1(c)(2). Plaintiffs responded to this argument by filing a Motion to File Overlength Statement of Material Facts (Docket No. 258). The Court in its October 15, 2004, Order (Docket No. 296) granted Plaintiffs' Motion.

Micron also argued in its Motion to Strike Memo that Plaintiffs' Statement of Material Facts should be stricken because the statement was "unsupported by sworn testimony as required by Federal Rule of Civil Procedure 56(c)." Motion to Strike Memo, p. 4. Micron's sole argument for this portion of its Motion to Strike is that the deposition extracts attached to William H. Thomas's Affidavit in Support of Plaintiffs' Motion for Partial Summary Judgment are "inadmissible." Micron argues they are inadmissible because they were incorrectly authenticated in Thomas's Affidavit.

In support of Plaintiffs' Motion for Leave to File Overlength Statement of Material Facts, Plaintiffs filed an additional Affidavit by William H. Thomas (Second Thomas Affidavit)

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' STATEMENT OF MATERIAL FACTS FILED IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: STATUTE OF LIMITATIONS, P. 2

(Docket No. 259). In that Affidavit, Thomas pointed out that of the 20 depositions cited in Plaintiffs' Statement of Material Facts, 14 had previously been submitted in their entirety by Micron in support of two of its pleadings, Docket No. 122, Second Affidavit of Gregory C. Tollefson in Support of Response to Plaintiffs' Motion for Conditional Certification (filed under seal) and Docket No. 202 Hancock Affidavit in Support of Defendant's Motion for Summary Judgment Re: Plaintiffs' Claims of Altering Employees' Timecards (filed under seal). It is Plaintiffs' contention that since these 14 depositions had already been submitted into the record by defendant it was unnecessary to submit more than the contextual portions of the depositions cited by Plaintiffs in their Motion for Partial Summary Judgment.

The Second Thomas Affidavit also sought to correct the evidentiary oversight of the six deposition extracts not previously filed with the Court. Each of those<sup>1</sup> was properly authenticated in the manner required under the Federal Rules of Civil Procedure. In other words, Plaintiffs acknowledged the objection raised by Micron and did respond in an attempt to correct the oversight. In retrospect, the response was not as artful as it should have been. Further in order to comply with the Court's October 15, 2004 Order, William H. Thomas has submitted on behalf of Plaintiffs a supplemental affidavit attaching as exhibits all depositions previously cited in its Statement of Undisputed Facts.

The final basis for Micron's Motion to Strike is simply a generic objection that based on the inadmissibility of evidence submitted by Plaintiffs. In support of this argument, Micron cites

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<sup>1</sup> The attached deposition extracts were those of Isaac B. Moffett, Jeffrey R. Parrish, Laurie McGeorge, Jeffery Clevenger, Ryan Keen and James Wells.

black letter law that evidence offered in support of a motion for summary judgment must be admissible evidence. Plaintiffs take no issue with that standard. On the face of its Motion to Strike, Micron acknowledges that “. . . this argument is in the alternative, MEI has not described how each of the deposition transcripts are misleading and out of context.” (Motion to Strike Memo, p. 6, fn. 1). For that very reason it was and remains impossible for Plaintiffs to respond in any meaningful manner. Micron’s argument requires Plaintiffs to guess at the objection(s) Micron could make to each of the 20 cited deposition excerpts and then argue for their admissibility. Should the Court follow Micron’s suggestion in footnote 1 and request that Micron submit as basis for its objections, Plaintiffs will respond to the specific challenges.

The Court’s October 15, 2004, Order also required that Plaintiffs respond to Defendant Micron Electronic Inc.’s Motion to Strike Plaintiffs’ Statement of Undisputed Facts in Support of Plaintiffs’ Motion for Summary Judgment (Docket No. 266). Micron’s motion is based on Plaintiffs’ purported failure “to comply with Federal Rule of Civil Procedure 56(e) and other applicable law.” In Defendant Micron Electronics, Inc.’s Memorandum in Support of Motion to Strike Plaintiffs’ Statement of Undisputed Facts (Docket No. 225) Filed in Support of Plaintiffs’ Motion for Partial Summary Judgment, Docket No. 267 (“Memo to Strike II”), Micron, in Section II. A. reiterates its argument addressed above, that the deposition testimony submitted by Plaintiffs was inadmissible because it had not been properly authenticated. Plaintiffs adopt the response made above to that argument.

In Section II. B. of its Memo to Strike II, Micron relies on Federal Rules of Evidence 403 and 106 and Fed. R. Civ. P. 32(a)(4) to support its contention that Plaintiffs’ deposition

testimony offered in support of its summary judgment motion should be stricken. As to the applicability of those rules, Plaintiffs do not dispute that as an adverse party, Micron is authorized under Fed. R. Evid. 106 to require Plaintiffs to introduce other parts of recorded statements which should be considered contemporaneously with the proffered testimony. Fed. R. Civ. P. 32(a)(4) similarly requires the introduction of deposition testimony. Further, Fed. R. Evid. 403 does allow for the exclusion of relevant evidence on the grounds of prejudice, confusion or waste of time.

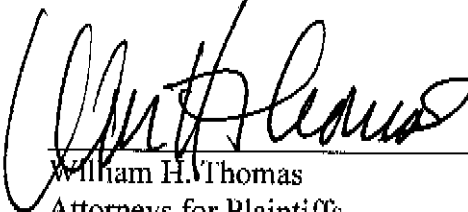
In Micron's Memo to Strike II, the arguments Micron makes are in large measure, cross examination and impeachment material. For instance, in its discussion of the Marvin Manseller, Micron itself mis-characterizes Plaintiffs' factual statement in an attempt to deflect the focus from the fact that for approximately one year Mr. Manseller worked on a salary basis, doing the same job as his hourly peers and, in order to earn significant bonuses, worked significant amounts of time in excess of 40 hours in a workweek.

Micron is also simply arguing facts when it attempts to discredit those witnesses who testified about working through lunches. Memo to Strike II, Section B.2. Micron attempts to convince the Court that there was no evidence whether the deponents did nor did not report the time spent working through lunch hours. That assertion is incorrect. As set forth in Plaintiffs' Statement of Undisputed Facts, p. 3 - 4, Timothy Kaufmann, Ryan Keen, Linda Lee, Isaac Moffett, and Jeffrey Parrish testified that there were times when they did not record the time spent working through lunches. Any contradictions in the testimony, may be the basis for arguments, but it is hardly misleading.

The same is true for Micron's other arguments, Memo to Strike II, Sections B.3. and B. 4. The assertions by Micron regarding the issue of whether the supervisors knew of the off-the-clock work and whether employees would or would not be paid for off-the-clock work, are simply arguments that could be used to attempt to impeach a witness on the stand.

DATED this 20th day of October, 2004.

HUNTLEY PARK, LLP



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William H. Thomas  
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2004, a true and correct copy of the foregoing instrument was served upon opposing counsel as indicated below:

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☐ Via Hand Delivery  
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William H. Thomas